

13 CV 2215

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FTBK INVESTOR II LLC AS TRUSTEE FOR
NY BROOKLYN INVESTOR II TRUST 15,

Plaintiff

-against-

2607 JEROME D, LLC, 2607 JEROME N,
LLC, AARON WEXLER, NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD,
CITY OF NEW YORK DEPARTMENT OF
HOUSING PRESERVATION AND
DEVELOPMENT, FTBK INVESTOR II LLC
AS TRUSTEE FOR NY BROOKLYN
INVESTOR II TRUST 12, FTBK INVESTOR
II LLC AS TRUSTEE FOR NY BROOKLYN
INVESTOR II TRUST 13, FTBK INVESTOR
II LLC AS TRUSTEE FOR NY BROOKLYN
INVESTOR II TRUST 14, and "JOHN DOE
#1 through JOHN DOE #12", the last twelve
names being fictitious and unknown to
Plaintiff, the persons or parties intended being
tenants, occupants, persons or corporations, if
any having or claiming an interest upon the
premises described in the Complaint,

Defendants.

2607 Jerome N, LLC,

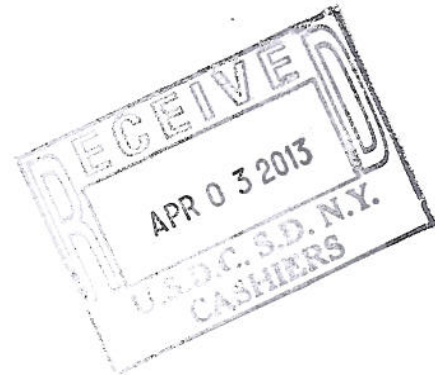
Third-Party Plaintiff

-against-

SOVEREIGN BANK, NIGHTINGALE
PROPERTIES, LLC, MADISON REALTY
CAPITAL ADVISORS, LLC, D&A
EQUITIES, LLC and DAVID DEUTSCH

Defendants.

NOTICE OF REMOVAL



2607 Jerome N, LLC (“**2607 Jerome**”), hereby gives notice of the removal (the “**Notice of Removal**”) to this Court, pursuant to 28 U.S.C. § 1452(a) and Federal Rule 9027 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), of the action captioned *FTBK Investor II LLC as Trustee for NY Brooklyn Investor II Trust 15 v. 2607 Jerome D, LLC, et al.*, Index N. 35011/2012E, from the Supreme Court of the State of New York, County of Bronx (the “**State Court Action**”), where it is currently pending.

1. On January 3, 2013 (the “**Petition Date**”), Northside Development, LLC (“**Northside**”) and its wholly-owned affiliates 2607 Jerome, 2334 Washington N, LLC and 1084 New York N, LLC filed voluntary petitions for relief under chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”). 2607 Jerome’s bankruptcy case is presently pending before the Bankruptcy Court, Hon. Robert E. Gerber presiding, in the case styled *In re 2607 Jerome N, LLC, et al.*, Case No. 13-10034 (REG) (the “**Bankruptcy Case**”).

2. 2607 Jerome is a defendant in the State Court Action in which FTBK Investor II LLC (“**FTBK**”) sought to foreclose upon property located at 2607 Jerome Avenue, Bronx, New York 10468, Block 3202, Lot 55. 2607 Jerome is also a third-party plaintiff pursuant to third-party complaint filed in the State Court Action as against Sovereign Bank, Nightingale Properties, LLC, Madison Realty Capital Advisors, LLC, D&A Equities, LLC and David Deutsch, seeking damages for breach of fiduciary duty, breach of contract, interference in mortgage contract and unjust enrichment.

3. The United States District Court for the Southern District of New York has jurisdiction over the State Court Action pursuant to 28 U.S.C. § 1334 because the State Court Action arises in or is related to the Bankruptcy Case. *See* 28 U.S.C. § 1334(b). Moreover, upon

removal to this Court, this proceeding should be referred to the Bankruptcy Court. *See* Standing Order of Reference Re: Title 11, M10-468 (Feb. 1, 2012) (“any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 are referred to the bankruptcy judges for this district.”).

4. The State Court Action constitutes a core proceeding because resolution of the claims asserted in the State Court Action will directly affect the allowance or disallowance of claims asserted by D&A Equities, LLC and/or FTBK against 2607 Jerome and 2607 Jerome’s counterclaims to same and 2607 Jerome’s third-party claims against Sovereign Bank, Nightingale Properties, LLC, Madison Realty Capital Advisors, LLC, D&A Equities, LLC and David Deutsch, *see* 28 U.S.C. § 157(b)(2)(B), and 2607 Jerome consents to the entry of final orders or judgments by the Bankruptcy Court if it is determined that the Bankruptcy Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution. Moreover, in the event that the State Court Action is determined to be a non-core proceeding, 2607 Jerome consents to the entry of final orders or judgments by the Bankruptcy Court.

5. Removal of the State Court Action, therefore, is appropriate under 28 U.S.C. § 1452(a), which allows for the removal of claims and causes of action “to the district court for the district where such civil action is pending, if such district court has jurisdiction of such claim or cause of action under section 1334 of” Title 28. Furthermore, removal is proper under Federal Rule of Bankruptcy Procedure 9027 and is timely brought pursuant thereto within 90 days of the Petition Date.

6. Copies of all process and pleadings filed in the State Court Action are to be filed contemporaneously with the filing of this Notice of Removal in accordance with 28 U.S.C. § 1446(a) and/or Federal Rule of Bankruptcy Procedure 9027(a)(1).

7. A copy of the Notice of Removal will be filed with the Supreme Court of the State of New York, County of Bronx, and will be served on plaintiff's counsel pursuant to Bankruptcy Rule 9027(b), (c).

Dated: April 3, 2013
New York, New York

KASOWITZ, BENSON, TORRES
& FRIEDMAN LLP

By: 

David M. Friedman (dfriedman@kasowitz.com)

Daniel A. Fliman (dfliaman@kasowitz.com)

Julia A. Balduzzi (jbalduzzi@kasowitz.com)

1633 Broadway

New York, New York 10019

Telephone: (212) 506-1700

Facsimile: (212) 506-1800

Proposed Counsel for 2607 Jerome N, LLC